

REMARKS

Reconsideration of the present application in view of the above amendments and the following remarks is respectfully requested.

I. Status of the Claims

Claims 1, 4, 6-12 and 24-26 are currently pending in this application and stand rejected under 35 U.S.C. § 103(a). Claims 2, 3, 5 and 13-19 and 23 have been withdrawn from consideration pursuant to 37 C.F.R. § 1.142(b), as being directed to a non-elected species or invention, there being no allowable generic or linking claim. Claims 20-22 have been canceled by a previous amendment.

II. Rejection Under 35 U.S.C. §103(a)

The Examiner has rejected claims 1, 4, 6-12 and 24-26 under § 103(a) as being unpatentable over Ishihara, United States Patent No. 4,974,725 ("Ishihara") in view of Smart, United States Patent No. 4,809,455 ("Smart"); Bell, United States Patent No. 5,672,342 ("Bell") or Warberg, United States Patent No. 6,337,081 ("Warberg").

In the Office Action dated November 2, 2005, the Examiner has rejected the Applicant's argument that the Ishihara and Warberg containers are not permanently closed and that Bell discloses only a method of urine collection and storage. The Examiner states that Ishihara provides for any scent generating material in a closed envelope container, and that Bell provides one type of scent generating material in the form of either urine or an animal secretion gland. The Examiner also states that the Applicant's reference to the disclosure in Bell stating that the collected urine should be applied to a dragline is only one possible example of how urine may be

used. The Examiner further states that the requirement for a permanent closure is not supported by the claim language. Accordingly, claim 1 has been amended to recite "a permanently closed container having an odoriferous composition therein." Support for this amendment can be found in the specification of the instant application. *See Weiser, United States Patent Publication No. 20030175320, Paragraph [005]*. Claim 1 of the instant application, as amended, now requires: (1) a permanently closed container formed from a thin sheet material (2) having an odoriferous composition therein comprised of a carrier material and liquid animal product (3) with the permanently closed container being pervious to the passage therethrough of gas and impervious to the passage therethrough of liquid.

Applicant respectfully disagrees with the Examiner's statements regarding the features of the prior art that are relevant to the Applicant's device and required by the claims of the instant application. Ishihara discloses a *Container for Organoleptically Active Substance*, which is a container utilized for producing a deodorant, scenting and/or repellent effect. Ishihara comprises a synthetic resin outer envelope that is "water-impermeable" and "gas-permeable," but not permanently closed. *Ishihara, Col. 1, Lns. 35-45*. The outer envelope holds a mixture of an organoleptically active substance and a water-absorbing synthetic resin, both of which are in powder form. *Id.* The organoleptic substance may, in the alternative, be a substance borne on a water-insoluble granular carrier and can be a deodorant, perfume, insect repellent or other similar substance. *Id., Col. 1, Lns. 45-50*. The mixture may be further packed inside an inner bag or pouch constructed from a water-soluble synthetic resin material. *Id.*

The outer envelope of Ishihara has a tightly closable water inlet in one corner for introducing water into the envelope. *Id.* The periphery of the outer envelope is heat-sealed except for the part associated with the water inlet. *Id., Col. 2, Lns. 65-69*. The introduction of water into the water-impermeable, gas-permeable synthetic resin envelope through the water

inlet causes dissolution of the water-soluble inner pouch, if it exists. *Id.*, Col. 1, Ln. 65 - Col. 2, Ln. 9. Ultimately, the water-absorbing synthetic powder resin swells and forms a jelly-like substance which entraps the active substance. The active substance permeates the gas-permeable synthetic resin envelope and is gradually released into the ambient atmosphere. *Id.*, Col. 2, Lns. 10-23.

Ishihara provides for activation of the contained mixture through the introduction of water into the envelope into the water inlet by means of a straw or other similar object. *Id.*, Col. 3, Lns 1-8. Once the desired amount of water is added to the container, the straw is removed and the water inlet becomes tightly, but never permanently, closed. The contents inside the container become a jelly-like substance subsequent to the introduction of water, and the substance permeates the gas-permeable envelope for gradual release into the environment. The substance is only contained within the envelope without exiting through the water inlet due to its thick jelly-like consistency. Thus, Ishihara does not teach or suggest an envelope which is impervious to the passage of liquid due to the existence of the water inlet. Claim 1 of the instant application requires such a closed, liquid impervious container.

Bell discloses an *Animal Scent Attractant Kit and Method* used to lure animals to a selected location. Bell discloses a kit made from the urine of a single animal which is stored in a sealed bottle until needed for use. *Bell*, Col. 2, Lns. 28-31. Bell further discloses a method of making the animal scent attractant kit which generally involves placing a single animal into a stall during which time the animal is fed and provided with water. *Id.*, Col. 2, Lns. 33-36. Any urine that is voided from the animal is immediately collected and stored in a package. *Id.*, Col. 2, Lns. 36-38. The urine is generally packaged into a bottle which contains a cover that can be sealed with wax for storage before use. *Id.*, Col. 2, Lns. 39-40. The disclosure of Bell is limited to the collection and storage of urine, and the container disclosed by Bell is merely a storage

container that is not used for the active functionality of the device. The utilization of the collected urine discussed by Bell is specifically in connection with a dragline. *Id.*, Col. 1, Lns. 32-35.

Warberg discloses a *Rodent Repellent System* for repelling rodents from within an enclosed area while providing a pleasant scent. Warberg comprises a bag-like container constructed of a perforated plastic or cloth which has a drawstring opening. *Warberg*, Col. 3, Lns. 16-22. The container is filled with a cellulose fiber, such as corn cob chips, that have been treated with a fragrance oil. *Id.* The oil is retained by the corn cob chips and slowly released through the container to provide a strong scent used to repel small animals by irritating their respiratory system. *Id.*, Col. 3, Lns. 28-33. The container may take the form of any shape and is constructed of a permeable material such as perforated plastic or cloth. *Id.*, Col. 3, Lns. 34-38. The only methodology for "closing" the container is to slidably position the drawstring within the neck of the container and subsequently tighten the drawstring. *Id.*, Col. 3, Lns. 39-42. By tightening the drawstring, one can prevent the removal of material from the neck of the container. However, the container does not prevent the passage of liquid therethrough, as required by Claim 1 of the instant application, because of the perforations in the container.

Smart discloses a *Bait Package and Method*, and more specifically, a sealed package containing an odoriferous, effusive attractant material and an absorbent material. The bait packaging is a peripherally sealed, laminated, aluminum foil or plastic film envelope, such as the type currently used in the individual packaging of condiments, i.e., catsup, mustard or mayonnaise. *Smart*, Col. 1, Lns. 45-55. The packaging must be punctured by the user immediately prior to use and is most useful for short-term recreational use. *Id.* The packaging may also be in the form of other easily penetratable containers, such as soft plastic bottles or collapsible tubes. *Id.*, Col. 3, Lns. 23-28. Regardless of the type of container utilized as

packaging, the sealed package must be punctured before use to enable diffusion of the bait component into the surrounding environment. *Id.* Similar to Ishihara, the Smart container is therefore pervious to liquid contrary to the requirements of Claim 1 of the instant application.

Regarding the § 103(a) rejection based on Ishihara in view of Bell, the Examiner states that Bell provides urine and an animal secretion gland which function as scent generating materials. The Examiner further states that Ishihara provides for any scent generating material in a closed envelope container. Ishihara does not define the specific organoleptically active substances that could be mixed with the synthetic resin, but limits the substance to certain groups including deodorants, insect repellents or other similar substances. However, each of these materials differs from urine/animal secretion glands in that each is an inorganic substance or synthetic chemical. Furthermore, the substitution of urine for water as the activation substance in connection with the partially sealed container of Ishihara will destroy the functionality and utility of the Ishihara device. *See, Declaration Under 37 C.F.R. § 1.132.* Moreover, Bell does not suggest the use of a container or the addition of the urine to a container that is to be used as an animal attractant device. Instead Bell teaches that the urine should be used on a drag line. Thus, there is no teaching in either Ishihara or Bell reference that would suggest a combination of the two references.

The Examiner does not provide a basis in the current Office Action for the § 103(a) rejection and combination of the Ishihara and Warberg references. In prior Office Actions dated September 2, 2004 and May 4, 2005, the Examiner has stated that Ishihara, which has a scent material and a carrier, may be combined with Warberg, which shows fibrous carriers that may be used in the Ishihara device. Ishihara states that the organoleptically active substance in powder form may occur as a powder or on a water-insoluble granular carrier which is contained in the inner bag or pouch with the water-absorbing synthetic resin powder. *Ishihara, Col. 1, Lns. 46-*

49; *Col. 2, Lns. 29-37*. The contents of the envelope are not bulky and are lightweight before use for convenient storage and transportation. *Id.* The corn cob chips of Warberg do not have the granularity contemplated by Ishihara as a carrier for the organoleptically active substance that would maintain these particular features of the Ishihara device. There is therefore no motivation in Ishihara to use the corn cob chips of Warberg as a carrier and therefore no motivation, teaching or suggestion in either reference to utilize the container of Ishihara with the carrier material of Warberg.

Finally, the Examiner does not provide a basis in the current Office Action for the § 103(a) rejection and combination of the Ishihara and Smart references, nor has the Examiner provided a reason in any other Office Action. In an Office Action dated September 2, 2004, the Examiner, in rejecting the claims based on Ishihara in view of Smart, stated that "Smart provides a liquid animal secretion urine with a powder or granular carrier, but Smart does not provide a container." However, Smart does provide a container which is "preferably in the form of a sealed aluminum foil or plastic film envelope" because "an easily puncturable container of the invention is desirable as providing for economical mass production of the bait packages." *Smart, Col. 3, Lns. 23-26*. Smart teaches away from using any type of container that would hamper the mass production of the same. Therefore, there is no teaching or suggestion in either reference to utilize the container of Ishihara with the material of Smart.

CONCLUSION

Based on the foregoing remarks, Applicants respectfully submit that claims 1, 4, 6-12, 24-26 are in condition for allowance.

If a telephone conference would facilitate prosecution of this application in any way, the Examiner is invited to contact the undersigned at the number provided.

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